



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street

San Francisco, CA 94105-3901

Dorothy Rice
Executive Director
California State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Dear Ms. Rice:

The Environmental Protection Agency (EPA) has reviewed the amendment to the Water Quality Control Plan for the San Francisco Bay Region (Basin Plan) adopted under Resolution No. R2-2006-0086 that adopts site-specific marine aquatic life water quality objectives for cyanide in San Francisco Bay. I am pleased to inform you we are approving these site-specific objectives, subject to completion of the Endangered Species Act (ESA) section 7(a)(2) consultation with the U.S. Fish and Wildlife Service (U.S. FWS) and the National Marine Fisheries Service (NMFS; collectively, the Services).

The California Regional Water Quality Control Board, San Francisco Bay Region, (Regional Board) adopted the amendment on December 16, 2006 under Resolution R2-2006-0086. The California State Water Resources Control Board (State Board) approved the amendment on December 4, 2007 under Resolution No. 2007-0077, and the California Office of Administrative Law (OAL) approved the amendment on February 28, 2008, OAL File No. 2008-0114-03S. EPA received the State's Record of Adoption and request for approval on May 28, 2008. By this letter, EPA is approving the site-specific marine aquatic life water quality objectives for cyanide within Regional Board Resolution No. R2-2006-0086.

Background: San Francisco Bay Basin Plan Amendment

Regional Board Resolution No. R2-2006-0086 amends the Basin Plan to include marine aquatic life water column water quality objectives of 2.9 ug/l for chronic conditions (4 day average), and 9.4 ug/l for acute conditions (one hour average) in all segments¹ of San Francisco Bay. The amendment also contains an implementation provision which requires effluent limits for wastewater and selected industrial dischargers, and contains strong pollution prevention and source control actions designed to prevent water quality degradation and ensure ongoing attainment of site-specific objectives. The implementation provision also includes a selection of dilution credits for shallow water dischargers. The dilution credits will be used to calculate water quality-based effluent limits in permits.

¹ All segments of San Francisco Bay include: the Sacramento/San Joaquin River Delta (within San Francisco Bay region); Suisan Bay; Carquinez Strait; San Pablo Bay; Central San Francisco Bay; Lower San Francisco Bay; and South San Francisco Bay.

Today's Action

Section 303(c) of the Clean Water Act (CWA) requires EPA to approve or disapprove new or revised state-adopted water quality standards. The State regulatory provisions that are subject to EPA's approval authority under CWA section 303(c) are those addressing antidegradation, beneficial uses, water quality criteria, and certain provisions addressing implementation of water quality standards for surface waters.

EPA has determined that the portions of the above Basin Plan amendment to adopt site-specific water quality objectives for cyanide of 2.9 ug/l (chronic 4 day average) and 9.4 ug/l (acute one hour average) are subject to EPA's CWA section 303(c) approval authority. Pursuant to CWA section 303(c) and the implementing federal regulations at 40 CFR Part 131, EPA hereby approves this adoption of water quality objectives, subject to completion of the ESA section 7(a)(2) consultation with the Services. EPA's approval is based on our finding that these portions of the amendment are consistent with the requirements of the CWA and EPA's regulations at 40 CFR 131.5 and 131.6.

Based on discussions with the State Board and Regional Board legal and technical staff, EPA's understanding is that the implementation provision contained in the Basin Plan amendment implements the existing State Board's Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays and Estuaries of California (SIP's) mixing zones and dilution credits provision (Section 1.4.2), and is fully consistent with that provision. Therefore, EPA understands that the State is not submitting the implementation provision for approval to EPA as a water quality standard, and EPA is not taking action on that provision.

Public Participation

EPA compliments the State on its efforts to include the public in the development and review of the new site-specific water quality objectives. Public involvement is an integral component of a successful water quality program. Based upon our review, we have concluded that the public review procedures followed by the State in the development of Regional Board Resolution No. R2-2006-0086 and State Board Resolution No. 2007-0077 were consistent with the procedural requirements for public participation in triennial reviews, adoption, and revision of state water quality standards.

ESA Consultation with the Services on EPA's Action

Section 7(a)(2) of the ESA requires that federal agencies, in consultation with the Services, insure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of federally listed threatened or endangered species or result in the destruction or adverse modification of designated critical habitat of such species. In August 2006, EPA initiated informal consultation with the Services², and will continue to consult with

² See correspondence from U.S FWS, Sacramento Office, August 14, 2006, transmitting a species list specifically for the cyanide site-specific objectives for San Francisco Bay, per request of Susan Hatfield, EPA, FWS Document Number 06081404015. More recent informal consultation involved phone contact July 9-10, 2008, between Diane Fleck of EPA, Joe Dillon of NMFS, and Tom Maurer of U.S. FWS.

the Services on this action. We anticipate concluding consultation in the near future. Consistent with ESA section 7(d), we find that our approval of the revision to the aquatic life water quality objectives will not "make any irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation of implementation of any reasonable and prudent alternative measures which would not violate [ESA section 7] subsection (a)(2)."

EPA thanks the San Francisco Regional Board staff for its work on the objectives adopted under Regional Board Resolution No. R2-2006-0086. If there are any questions regarding EPA's action, please contact Diane Fleck of my staff at (415) 972-3480. As always, EPA looks forward to continued cooperation with the State in achieving our mutual environmental goals.

Sincerely,

 22 July 2008
Alexis Strauss
Director, Water Division

cc: Bruce H. Wolfe, California Regional Water Quality Control Board,
San Francisco Bay Region
Caroline Whitehead, EPA Office of Water, Mail Code 4301